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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

BILLY R. LOWERY,

Defendant and Appellant.

2d Crim. No. B215848  
(Super. Ct. No. BA330335-01)  
(Los Angeles County)

Billy R. Lowery appeals a judgment following an order revoking his probation. In 2007, Lowery pled guilty to the crime of selling a controlled substance, cocaine. (Health & Saf. Code, § 11352, subd. (a).) After accepting his plea in 2007, the trial court imposed a five-year sentence, but it suspended execution of the sentence and placed him on formal probation. In 2009, the court found that he had violated his probation by selling drugs. We conclude that substantial evidence supports that finding. We affirm.

FACTS

On August 30, 2008, Police Officer Steve Rodriguez was in a "security office" of the Union Rescue Mission. He was monitoring street activity on San Julian Street and other locations using cameras located on the second floor of that building.

He saw a "group" of seven or eight people who "had gathered" around Lowery. Oscar Medina approached Lowery. Rodriguez testified that he was "able to

clearly see . . . Medina give currency to . . . Lowery," and Lowery, "in exchange," handed "an object" to Medina. The object was "a little bit smaller than a fingernail." Medina took it and left.

Steve Rodriguez notified Police Officers Rafael Rodriguez and Brian Putnam who stopped and detained Medina. Officer Putnam testified that he recovered "an off-white, rock-like solid resembling cocaine base" from Medina's right hand. It was booked into evidence and was "found to contain 0.04 grams of cocaine in the form of cocaine base."

Officer Steve Rodriguez saw Lowery "making the same type of transactions with the group that was around him." Lowery took items out of a "medicine capsule" and gave those items to people who handed him currency. He saw Lowery make "approximately eight" transactions.

Officer Rafael Rodriguez testified that after detaining Medina he approached Lowery. As he approached, the crowd of people around Lowery "quickly dispersed" when they saw Rodriguez's LAPD jacket and badge. Lowery was sitting with the "medicine canister" and "numerous wads of crumbled U.S. currency . . . resting on the ground between his legs." As Lowery stood up when Rodriguez was taking him into custody, a woman grabbed the money. She was detained by police.

After Medina and Lowery were arrested, Officer Steve Rodriguez examined the medicine capsule that Lowery had been holding. He had "investigated or participated in over a thousand arrests involving rock cocaine base." He said the capsule was empty, but there was a residue that was present. Rock cocaine has a "very distinct smell," and the medicine capsule smelled "of rock cocaine."

In the defense case, Medina testified that he "was looking for crack cocaine." He approached "a girl" who was selling rock cocaine. He gave her the money "and then she turned around and handed it to [him] and [he] left." Medina testified that Lowery was not present when he bought the drugs. On cross-examination, Medina said that when he arrived at 6th and Julian Street to buy cocaine, he "was under the influence of rock cocaine." He had two prior felony convictions.

## DISCUSSION

### *Substantial Evidence*

Lowery claims there was insufficient evidence that he violated the terms of his probation by selling drugs. We disagree.

In deciding the sufficiency of the evidence, we draw all reasonable inferences from the record in support of the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We must "accord due deference to the findings of the trier of fact" whether express or implied. (*Ibid.*; *People v. Jones* (1990) 51 Cal.3d 294, 314.)

Lowery contends Officer Steve Rodriguez's testimony about the drug sale was weak because he viewed the street activity from a distance and there were obstructions to his view. On cross-examination, Rodriguez said that at times the seven or eight individuals in the crowd who were purchasing drugs would block his view.

But the trial court could reasonably infer that such brief or temporary obstructions did not prevent him from seeing the critical event--the exchange between Medina and Lowery. Rodriguez testified that he had a "clear view" of the locations that he was monitoring. He said he was "able to clearly see . . . Medina give currency to . . . Lowery."

Lowery asks us to give a diminished weight to Rodriguez's testimony and greater weight to other evidence in the record. But we do not weigh the evidence; that is a matter for the trier of fact. (*People v. Ochoa, supra*, 6 Cal.4th at p. 1206.) We must "presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence." (*People v. Jones, supra*, 51 Cal.3d at p. 314.)

Lowery cites some evidence in the record to support his position. But the issue is not whether some evidence supports the defense, it is whether substantial evidence supports the judgment. He claims Steve Rodriguez's observations were not corroborated by any other evidence. He notes that Officers Putnam and Rafael Rodriguez did not see the exchange between Medina and him because they came to the scene after it took place. But Rafael Rodriguez's testimony about the wads of currency and medicine capsule, and Putnam's testimony about the cocaine he confiscated from Medina, present

strong evidence of guilt when combined with Steve Rodriguez's observations. Moreover, Lowery's medicine capsule contained a residue that had the odor of rock cocaine. Evidence about the crowd and the multiple exchanges of currency also presents strong inferences which support the prosecution's case.

Lowery argues that Medina's testimony shows that a woman was the one who was selling drugs. He claims the only reasonable inference from what Medina said is that he (Lowery) was not the drug dealer; he was merely "in the wrong place" at the wrong time.

But the trial court did not find Medina's version of events to be plausible. In considering his testimony, the court identified several credibility "problems" he had, including: 1) "felony convictions," 2) he "was under the influence at the time," and 3) "he has nothing to lose by altering the version" of events.

By contrast, the trial court found Steve Rodriguez to be credible. It said, "I believe that he saw what he claimed to have seen. That's the version that I accept." The court also said, "It is a strict credibility call is what it amounts to." We do not decide the credibility of the witnesses; that is a matter for the trier of fact. (*People v. Ochoa, supra*, 6 Cal.4th at p. 1206.) We are not in a position to credit testimony that the trial court expressly rejected.

The judgment is affirmed.

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GILBERT, P.J.

We concur:

COFFEE, J.

PERREN, J.

Frederick N. Wapner, Judge  
Superior Court County of Los Angeles

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